

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

<p>DHSC, LLC d/b/a AFFINITY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., HOSPITAL OF BARSTOW, INC., d/b/a BARSTOW COMMUNITY HOSPITAL, WATSONVILLE HOSPITAL CORPORATION d/b/a WATSONVILLE COMMUNITY HOSPITAL and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers</p> <p>and</p> <p>NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC) and CALIFORNIA NURSES ASSOCIATION (CNA), NATIONAL NURSES UNITED</p>	<p>08-CA-167313</p>
<p>HOSPITAL OF BARSTOW, INC. d/b/a BARSTOW COMMUNITY HOSPITAL, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers</p> <p>and</p> <p>CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC)</p>	<p>31-CA-167522 31-CA-174673</p>

BLUEFIELD HOSPITAL COMPANY, LLC d/b/a BLUEFIELD REGIONAL MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers  and  NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), AFL-CIO	10-CA-168085 10-CA-151016 10-CA-153544 10-CA-174418 10-CA-177532
GREENBRIER, VMC, LLC d/b/a GREENBRIER VALLEY MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers  and  NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), AFL-CIO	10-CA-167330 10-CA-150997 10-CA-153336

**GREENBRIER VMC, LLC D/B/A GREENBRIER MEDICAL  
CENTER AND BLUEFIELD HOSPITAL COMPANY, LLC D/B/A  
BLUEFIELD REGIONAL MEDICAL CENTER'S MOTION TO  
CANCEL AUGUST HEARING DATES**

As Respondents in the above-captioned cases, Greenbrier VMC, LLC  
d/b/a Greenbrier Valley Medical Center and Bluefield Hospital Company,  
LLC d/b/a Bluefield Regional Medical Center (hereafter, collectively at  
times, the "Hospitals") hereby request, by and through their Undersigned  
Counsel, that Your Honor cancel the hearings presently scheduled to  
convene on August 1 and 2 and August 7 through August 9, 2018.

## **BACKGROUND**

On May 24, 2018, as the record closed in Los Angeles as part of CHS 1.0, Counsel for the General Counsel informed Judge Laws and the parties that the General Counsel wished to renew settlement discussions and intended to present the Respondents with what they described as a “comprehensive settlement demand” that would cover both CHS 1.0 and CHS 2.0. Accordingly, on June 1, 2018, Your Honor and Judge Laws convened a conference call with the parties and scheduled a settlement conference in Cleveland from July 24 to July 26, 2018.

On June 7, 2018, the Undersigned called Aaron Sukert and asked for an approximation as to when the Respondents would receive the General Counsel’s settlement demand. Mr. Sukert advised that he was unable to provide any approximation, whereupon the Undersigned urged Mr. Sukert to present the General Counsel’s settlement demand as quickly as possible and observed that any delay in the presentation of the settlement demand would prejudice the parties’ ability to settle the litigation. Counsels’ phone call was subsequently confirmed by the e-mail attached hereto, and made a part hereof, as “Exhibit A.”

On June 15, 2018, the Undersigned called Stephen Pincus, and as before, requested an estimate as to the delivery date of the General



Counsel's settlement demand. Mr. Pincus advised he, personally, had no knowledge but advised he would relay the Hospitals' request to the Regional Director. On June 20, 2018, Mr. Pincus advised that he was unable to estimate when the General Counsel's settlement demand would be presented to the Respondents. A copy of Counsels' exchange of e-mails is attached hereto, and made a part hereof, as "Exhibit B."

On June 28, 2018, Mr. Sukert provided the Respondents' Counsel with most of the backpay amounts that the General Counsel is seeking in connection with CHS 1.0 and CHS 2.0. Later the same day, the Undersigned requested that Mr. Sukert confirm the backpay amounts did not constitute the comprehensive settlement demand that the General Counsel had pledged to present to the Respondents. Mr. Sukert so confirmed. The Undersigned then requested that Mr. Sukert advise as to when the Respondents could expect the General Counsel's demand. In response, Mr. Sukert stated: "[w]e have no information we can update you with at this time." A copy of the e-mails exchanged between the Undersigned and Mr. Sukert is attached hereto, and made a part hereof, as "Exhibit C."

On July 2, 2018, Counsel for the General Counsel presented the Respondents with revised backpay amounts. In an e-mail sent to the General Counsel on July 6, 2018, the Hospitals' Counsel observed the fact that

negotiations over backpay would require more than simply the presentation of alleged net backpay and requested that the General Counsel come forward with additional information (*e.g.*, the calculations on which the General Counsel relied to generate the backpay figures). A copy of the e-mails exchanged between the parties' respective Counsel is attached hereto, and made a part hereof, as "Exhibit D."

On July 10, 2018, Your Honor and Judge Laws convened another conference call with the parties. As part of the call, Counsel for the General Counsel informed Your Honor and Judge Laws that they had not yet presented the Respondents with the General Counsel's comprehensive settlement demand but expected to do so on or about July 18, 2018. The next day, Your Honor and Judge Laws issued an Order by which the parameters for the settlement conference were changed and Counsel for the General Counsel was obligated to advise by no later than July 18, 2018 as to whether the General Counsel intended to continue to pursue settlement negotiations or intended to resume litigation of CHS 2.0 as scheduled on August 1 and 2, 2018.

Through an e-mail submission to Your Honor and Judge Laws on July 17, 2018, Counsel for the General Counsel advised that, instead of attending a settlement conference in Cleveland beginning on July 24, 2018, the

General Counsel intended to resume litigation of CHS 2.0 on August 1 and 2, 2018. At the same time, Counsel for the General Counsel reaffirmed the General Counsel's desire to pursue settlement. In particular, the General Counsel requested that the deadline for the presentation of the settlement demand be extended from (roughly) July 18, 2018 to today, July 23, 2018. The e-mail also extended an invitation for the Respondents to pursue a settlement dialogue *via* telephone and e-mail. Later the same day, Your Honor and Judge Laws issued an Order by which the settlement conference was understandably vacated and, for purposes relevant here, Your Honor advised that litigation in CHS 2.0 would resume on August 1 and 2, 2018 for Greenbrier and from August 7 to August 9, 2018 for Bluefield.

Based upon Counsel for the General Counsel's e-mail of July 17<sup>th</sup>, the Hospitals expect to receive the General Counsel's settlement demand momentarily. In addition, as part of phone calls that began between the parties' respective attorneys on July 18, 2018, the Charging Party expressed a desire to pursue a non-Board settlement, and toward that end, stated an intention to present a settlement demand in the very near future.

In light of the imminent receipt of settlement demands from both the General Counsel and the Charging Party, and for all of the reasons explained below, the Hospitals respectfully request that Your Honor cancel the hearing



dates of August 1 and 2, 2018 and August 7 to August 9, 2018 and reschedule the hearings following the Board's ruling on the General Counsel's Special Appeal.<sup>1</sup>

### **ARGUMENT**

As part of the Order that issued on July 11, 2018, the General Counsel was given a choice, which was to pursue settlement negotiations **or** resume litigation. As understood by the Hospitals, the need for the General Counsel to take the proceedings in the direction of settlement or the direction of litigation was based upon the fact that the Hospitals could not reasonably be expected to engage in complex settlement negotiations while at the same time preparing for the resumption of complex litigation.

Counsel for the General Counsel's e-mail to Your Honor of July 17<sup>th</sup> purports to be the General Counsel's response to the options laid out by the July 11<sup>th</sup> Order. Instead of selecting one option over the other, however, the General Counsel essentially selected both options, and in the process, endeavors to take the proceedings in the opposite directions of settlement

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<sup>1</sup> On July 18, 2018, the General Counsel filed a Special Appeal in connection with the Consent Order that Your Honor entered on April 19, 2018. On July 19, 2018, Respondent CHSPSC, LLC requested that Your Honor cancel the August hearing dates on the basis of the Special Appeal. All of the Respondent Hospitals join in CHSPSC, LLC's well-founded request and respectfully submit that the August hearing dates should be cancelled purely on the basis of the Special Appeal, alone.

and litigation all at the same time. Specifically, the General Counsel reaffirmed an intention to present a comprehensive settlement demand to the Hospitals, along with the other Respondents, and though a settlement conference in Cleveland apparently is not desired at the moment, the General Counsel also invited settlement discussions to take place by e-mail and phone. And yet, at the very same time, the General Counsel requested that Your Honor move forward with the hearings presently scheduled to resume on August 1, 2018. These engulfing circumstances, where the Hospitals' resources and attorneys would be focused upon wholly incongruous objectives, are plainly unreasonable, but even worse, impose serious and undue obstacles upon settlement, which, based upon the recent discussions between the Charging Party and the Hospitals, is now clearly the goal of every party to the litigation.

The Hospitals recognize that the pace of settlement negotiations has been slow going. Significantly, however, the Hospitals have done all that they can to accelerate the pace of the settlement negotiations and should not be penalized, as they would be with forced litigation next month, for matters entirely outside of their control. As noted above, the General Counsel advised of an intention on May 24, 2018 to present the Respondents with a



comprehensive settlement demand.<sup>2</sup> Thereafter, on a number of occasions, the Hospitals urged the General Counsel to accelerate the development and presentation of the demand. Similarly, in response to the presentation of the General Counsel's backpay figures, the Hospitals promptly submitted their follow-up questions to the General Counsel. See Ex. D. The Hospitals even went so far as to forewarn the General Counsel that delay with the presentation of the settlement demand could prejudice settlement negotiations. See Exhibit A.

Obviously, though nothing is guaranteed, there is reason for optimism in connection with settlement. The General Counsel and all of the Respondents have reaffirmed their desires to achieve settlement, and as noted above, the Charging Party has now expressed a desire of its own. The cancellation of the August hearing dates would provide the parties with a

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<sup>2</sup> The fact the General Counsel assumed the responsibility to take the next step in the settlement process made good sense. Aside from the fact the Respondent Hospitals were the last party to make a settlement proposal, between the submission of the General Counsel's original settlement demand in October 2015 and today, there has, of course, been a change in the identity of the General Counsel. As Your Honor is surely aware, the current General Counsel, Peter Robb, has expressed a view of the Act that differs substantially from the views of his predecessor, Richard Griffin (see e.g., GC 18-04), which is a fact that the Hospitals have asked Counsel for the General Counsel to consider in connection with the development of the forthcoming settlement demand. A copy of Counsel's request is attached hereto, and made a part hereof, as Exhibit E.

valuable present opportunity to pursue settlement, which, in these circumstances, could take the form of a Board settlement or a non-Board settlement. At the same time, the parties would be under pressure to maintain their focus on settlement efforts, insofar as Judge Laws made clear in the July 17<sup>th</sup> Order that the deadline for the post-hearing briefs in CHS 1.0 was very unlikely to change, and of course, there would be a need to resume hearings before Your Honor in the future.

As Your Honor knows, the Board has a strong policy in favor of settlement. Indeed, on July 10, 2018, the Board launched a new pilot program to enhance the agency's Alternative Dispute Resolution program. Here, all of the parties have expressed a desire to settle not only the litigation before Your Honor but also the litigation before Judge Laws. Though the General Counsel will presumably object to any cancellation of the hearings scheduled for next month, the Hospitals should not be forced to pursue settlement and defend litigation concurrently, particularly given the fact the current circumstances are not of the Hospitals' own making. Indeed, the Hospitals warned the General Counsel of and endeavored to avoid the current circumstances. In addition, the entry of the Charging Party into the settlement discussions opens an entirely new and different pathway toward a possible resolution.

## CONCLUSION

For all the reasons set forth above, the Hospitals respectfully request that Your Honor cancel the August hearing dates and reschedule hearings following the Board's ruling on the General Counsel's Special Appeal.

Dated: Glastonbury, CT  
July 23, 2018

Respectfully submitted,

/s/ \_\_\_\_\_

Bryan T. Carmody, Esq.  
Carmody & Carmody, LLP  
Attorneys for DHSC, LLC d/b/a Affinity  
Medical Center, Hospital of Barstow, Inc.  
d/b/a Barstow Community Hospital,  
Bluefield Hospital Company, LLC d/b/a  
Bluefield Regional Medical Center,  
Greenbrier VMC, LLC d/b/a Greenbrier  
Valley Medical Center, and Watsonville  
Hospital Corporation d/b/a Watsonville  
Community Hospital  
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<p>HOSPITAL OF BARSTOW, INC. d/b/a BARSTOW COMMUNITY HOSPITAL, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers and QUORUM HEALTH CORPORATION and QHCCS, LLC, successor employers</p> <p>and</p>	<p>31-CA-167522 31-CA-174673</p>

CALIFORNIA NURSES ASSOCIATION / NATIONAL NURSES ORGANIZING COMMITTEE (CNA/NNOC)	
BLUEFIELD HOSPITAL COMPANY, LLC d/b/a BLUEFIELD REGIONAL MEDICAL CENTER, COMMUNITY HEALTH SYSTEMS, INC., and / or COMMUNITY HEALTH SYSTEMS PROFESSIONAL SERVICES CORPORATION, LLC, a single employer and / or joint employers  and  NATIONAL NURSES ORGANIZING COMMITTEE (NNOC), AFL-CIO	10-CA-168085 10-CA-151016 10-CA-153544 10-CA-174418 10-CA-177532
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### **CERTIFICATE OF SERVICE**

The Undersigned, Bryan T. Carmody, being an Attorney duly admitted to the practice of law, does hereby certify, pursuant to 28 U.S.C. § 1746, that, on July 23, 2018, the document above was served upon the following *via* email:

Aaron Sukert, Esq.  
Counsel for the General Counsel  
National Labor Relations Board, Region 8

1695 AJC Federal Office Building  
1240 East Ninth Street  
Cleveland, OH 44199  
[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)

Stephen Pincus, Esq.  
Counsel for the General Counsel  
National Labor Relations Board, Region 8  
1695 AJC Federal Office Building  
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Leonard Sachs, Esq.  
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Micah Berul, Esq.  
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[NDaro@CalNurses.Org](mailto:NDaro@CalNurses.Org)

Dated: Glastonbury, CT  
July 23, 2018

Respectfully submitted,

/s/ \_\_\_\_\_

Bryan T. Carmody, Esq.  
Carmody & Carmody, LLP  
Attorneys for DHSC, LLC d/b/a Affinity  
Medical Center, Hospital of Barstow, Inc.  
d/b/a Barstow Community Hospital,  
Bluefield Hospital Company, LLC d/b/a  
Bluefield Regional Medical Center,  
Greenbrier VMC, LLC d/b/a Greenbrier  
Valley Medical Center, and Watsonville  
Hospital Corporation d/b/a Watsonville  
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Glastonbury, CT 06033

(203) 249-9287  
[bryancarmody@bellsouth.net](mailto:bryancarmody@bellsouth.net)

## **EXHIBIT A**



**Subject:** CHS I and CHS II - Settlement

**Date:** Thursday, June 7, 2018 at 12:08:59 PM Eastern Daylight Time

**From:** Bryan Carmody

**To:** Sukert, Aaron

**CC:** Don Carmody, Carmen DiRienzo, Andrew Lammers

Aaron,

Thank you for our call shortly ago. As I explained when we spoke, I called you in order to get some sense of when the General Counsel plans to present the comprehensive settlement offer you referenced as part of our call with Judge Laws and Judge Carter last Friday. I expressed a hope that the offer would be presented soon given the fact that Carmen is scheduled to commence a two-week vacation on June 15 and her involvement would be indispensable in connection with our review of the settlement offer. I also noted the fact that, just as Carmen returns to work, the week of the Fourth of the July will be upon us. Although we, the lawyers, will be available throughout that week, I do expect the schedules for at least some of our decision-makers at the six hospitals we represent in the litigation will be affected by the holiday.

In response, you stated you were aware of the fact Carmen would be away for two weeks and expressed your recognition of the lead role that Carmen plays in the litigation. Nonetheless, you advised that the odds the settlement offer will be ready before June 15 are highly unlikely. I shared my view that the pace at which the General Counsel is working / not working is problematic and prejudices the opportunity for the parties to settle the case. I urged you during our call, as I do once more here in my e-mail, to accelerate the development and presentation of the settlement offer. In all of the circumstances, I believe the request is reasonable and necessary. I must say I was surprised to hear you say, for example, that the General Counsel has not even made a determination on the very basic question as to whether the offer will take the form of a formal or informal settlement.

I remain available to you, together with the Counsel for the General Counsel in the other Regions, for any questions and / or requests you may have in connection with settlement and look forward to these settlement discussions with the General Counsel, though hopefully on a track with a substantially accelerated pace.

Thank you,

Bryan

## **EXHIBIT B**

**Subject:** RE: DHSC, LLC d/b/a Affinity Medical Center et al. / Case Nos. 08-CA-117890 et. al.  
**Date:** Wednesday, June 20, 2018 at 11:27:43 AM Eastern Daylight Time  
**From:** Pincus, Stephen M.  
**To:** Bryan Carmody  
**CC:** Sukert, Aaron

Bryan – I apologize for not getting back to you earlier. I am sorry but I have no additional information about when the GC's settlement demand will be made.

Stephen

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**From:** Bryan Carmody [mailto:bcarmody@carmodyandcarmody.com]  
**Sent:** Monday, June 18, 2018 8:48 AM  
**To:** Pincus, Stephen M. <Stephen.Pincus@nrlb.gov>  
**Cc:** Sukert, Aaron <Aaron.Sukert@nrlb.gov>  
**Subject:** DHSC, LLC d/b/a Affinity Medical Center et al. / Case Nos. 08-CA-117890 et. al.

Stephen:

I wanted to follow-up on our call on Friday.

As you will recall, I asked whether you could provide any update in terms of when we could expect the General Counsel's new settlement demand. You, personally, had no knowledge but advised that you would run the question by your supervisor. I would appreciate an update by the end of the day.

Thank you,

Bryan

## **EXHIBIT C**



**Subject:** RE: CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)  
**Date:** Friday, June 29, 2018 at 8:54:41 AM Eastern Daylight Time  
**From:** Sukert, Aaron  
**To:** Bryan Carmody, Pincus, Stephen M.  
**CC:** Don Carmody, Carmen DiRienzo

Bryan:

We have no further information we can update you with at this time.

-Aaron

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**From:** Bryan Carmody [mailto:[bcarmody@carmodityandcarmody.com](mailto:bcarmody@carmodityandcarmody.com)]  
**Sent:** Thursday, June 28, 2018 4:51 PM  
**To:** Sukert, Aaron <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)>; Pincus, Stephen M. <[Stephen.Pincus@nlrb.gov](mailto:Stephen.Pincus@nlrb.gov)>  
**Cc:** Don Carmody <[dcarmody@carmodityandcarmody.com](mailto:dcarmody@carmodityandcarmody.com)>; Carmen DiRienzo <[cdirienzo@carmodityandcarmody.com](mailto:cdirienzo@carmodityandcarmody.com)>  
**Subject:** Re: CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)

Thank you for the confirmation.

Please advise as to when you expect to present the settlement demand.

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**From:** "Sukert, Aaron" <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)>  
**Date:** Thursday, June 28, 2018 at 4:38 PM  
**To:** Bryan Carmody <[bcarmody@carmodityandcarmody.com](mailto:bcarmody@carmodityandcarmody.com)>, "Pincus, Stephen M." <[Stephen.Pincus@nlrb.gov](mailto:Stephen.Pincus@nlrb.gov)>  
**Cc:** Don Carmody <[dcarmody@carmodityandcarmody.com](mailto:dcarmody@carmodityandcarmody.com)>, Carmen DiRienzo <[cdirienzo@carmodityandcarmody.com](mailto:cdirienzo@carmodityandcarmody.com)>  
**Subject:** RE: CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)

Bryan:

Yes, that's correct. These are just the backpay amounts that have been calculated up through 6/22/18 that would be part of any settlement agreement presented to Respondents.

Sincerely,

Aaron Sukert

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**From:** Bryan Carmody [mailto:[bcarmody@carmodityandcarmody.com](mailto:bcarmody@carmodityandcarmody.com)]  
**Sent:** Thursday, June 28, 2018 4:36 PM  
**To:** Sukert, Aaron <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)>; Pincus, Stephen M. <[Stephen.Pincus@nlrb.gov](mailto:Stephen.Pincus@nlrb.gov)>  
**Cc:** Don Carmody <[dcarmody@carmodityandcarmody.com](mailto:dcarmody@carmodityandcarmody.com)>; Carmen DiRienzo <[cdirienzo@carmodityandcarmody.com](mailto:cdirienzo@carmodityandcarmody.com)>; Sukert, Aaron <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)>  
**Subject:** Re: CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)

Aaron,

Thank you for your e-mail below.

I presume, but ask you to confirm, that your e-mail below does not constitute the

comprehensive settlement demand that the General Counsel has promised to present to the respondents.

Thank you,

Bryan

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**From:** "Sukert, Aaron" <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)>

**Date:** Thursday, June 28, 2018 at 2:30 PM

**To:** Carmen DiRienzo <[cdirienzo@carmodityandcarmodity.com](mailto:cdirienzo@carmodityandcarmodity.com)>, Bryan Carmody <[bcarmody@carmodityandcarmodity.com](mailto:bcarmody@carmodityandcarmodity.com)>, Andrew Lammers <[alammers@carmodityandcarmodity.com](mailto:alammers@carmodityandcarmodity.com)>, Don Carmody <[dcarmody@carmodityandcarmodity.com](mailto:dcarmody@carmodityandcarmodity.com)>, "Hudson, Robert D." <[rhudson@fbtlaw.com](mailto:rhudson@fbtlaw.com)>, "chsi-nlrb-hh@howardandhoward.com" <[chsi-nlrb-hh@howardandhoward.com](mailto:chsi-nlrb-hh@howardandhoward.com)>, "Isachs@howardandhoward.com" <[Isachs@howardandhoward.com](mailto:Isachs@howardandhoward.com)>, "pmccarthy@howardandhoward.com" <[pmccarthy@howardandhoward.com](mailto:pmccarthy@howardandhoward.com)>, "wouthier@rwjplc.com" <[wouthier@rwjplc.com](mailto:wouthier@rwjplc.com)>, "jjacobson@rwjplc.com" <[jjacobson@rwjplc.com](mailto:jjacobson@rwjplc.com)>, "Mearns, Timothy" <[Timothy.Mearns@nlrb.gov](mailto:Timothy.Mearns@nlrb.gov)>, "White, Joel" <[Joel.White@nlrb.gov](mailto:Joel.White@nlrb.gov)>, "Banks, Ashley L." <[Ashley.Banks@nlrb.gov](mailto:Ashley.Banks@nlrb.gov)>, "Schafhauser, Sarah B." <[Sarah.Schafhauser@nlrb.gov](mailto:Sarah.Schafhauser@nlrb.gov)>, "Mervin, Joelle" <[Joelle.Mervin@nlrb.gov](mailto:Joelle.Mervin@nlrb.gov)>, "Laufer, Amanda W." <[Amanda.Laufer@nlrb.gov](mailto:Amanda.Laufer@nlrb.gov)>, "Garber, Noah" <[Noah.Garber@nlrb.gov](mailto:Noah.Garber@nlrb.gov)>, "MacKay, Robert" <[Robert.MacKay@nlrb.gov](mailto:Robert.MacKay@nlrb.gov)>, "Katherine R. Cloud, Esq. R" <[kcloud@rwjplc.com](mailto:kcloud@rwjplc.com)>

**Cc:** "Choudhury, Rudra" <[Rudra.Choudhury@nlrb.gov](mailto:Rudra.Choudhury@nlrb.gov)>, "Pincus, Stephen M." <[Stephen.Pincus@nlrb.gov](mailto:Stephen.Pincus@nlrb.gov)>

**Subject:** CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)

Dear Counsel:

Attached are the approximate current backpay calculations for CHS I, CHS II and the compliance specification for Fallbrook based upon the information currently in General Counsel's possession.

General Counsel reserves the right to and will modify these figures based upon the receipt of any supplemental information, as necessary. Unless otherwise indicated, adjustments were made for interim earnings where appropriate. Interest has been computed through 6/22/18. As you know, interest continues to accrue thereafter. The backpay calculations take into account all of General Counsel's amendments to the complaints in CHS I and CHS II until the present. The figures are complete, unless as noted below. If you have follow up questions, please let us know, and we can include the particular Counsel for General Counsel involved in those allegations as part of those discussions.

Here are the approximate backpay calculations:

**CHS I: \$1,041,005.40**

**CHS II: \$3,132,011.10**

**TOTAL (CHS I + CHS II): \$4,173,016.50**

**Fallbrook Compliance: \$23,938.68**

**TOTAL (CHS I + CHS II + FALLBROOK COMPLIANCE CASE): \$4,196,955.18**

For CHS I:



Bluefield – the figure includes interest and excess tax liability, but backpay, interest and excess tax are not broken down in the spreadsheet.

Fallbrook – for both the CNA and SEIU allegations, to determine the Transmarine remedy, a two-week period was used, based on the parties reaching an overall settlement.

For CHS II:

Bluefield – the figure includes interest and excess tax liability, but backpay, interest and excess tax liability are not broken down in the attached spreadsheet. General Counsel withdrew Paragraph 44(C) (the PTO unilateral change allegation), and it is listed as having 0 backpay.

Greenbrier – the figure includes interest, but backpay and interest are not broken down in the attached spreadsheet. General Counsel withdrew Paragraph 38(C) (unilateral change to method of obtaining work and work hours in Cath lab) and it is listed as having 0 backpay.

As indicated, for CHS II, negotiation expenses for Bluefield and Greenbrier still need to be calculated.

Please contact us with any further questions. Please also cc any Counsel for General Counsel from any particular Regions for the respective Hospitals involved.

Sincerely,

Aaron Sukert and Stephen Pincus,  
Counsel for General Counsel

Stephen M. Pincus  
Attorney  
National Labor Relations Board, Region 8  
Anthony J. Celebrezze Federal Building  
1240 E. Ninth Street, Room 1695  
Cleveland, OH 44199-2086

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## **EXHIBIT D**



**Subject:** Re: CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18) - Revised for Greenbrier -7/2/18 Version

**Date:** Friday, July 6, 2018 at 12:35:45 PM Eastern Daylight Time

**From:** Carmen DiRienzo

**To:** Sukert, Aaron

**CC:** Bryan Carmody, Andrew Lammers, Don Carmody, Hudson, Robert D., chsi-nlrh-hh@howardandhoward.com, lsachs@howardandhoward.com, pmccarthy@howardandhoward.com, wouthier@rwjplc.com, jjacobson@rwjplc.com, Mearns, Timothy, White, Joel, Banks, Ashley L., Schafhauser, Sarah B., Mervin, Joelle, Laufer, Amanda W., Garber, Noah, MacKay, Robert, Katherine R. Cloud, Esq. R, Choudhury, Rudra, Pincus, Stephen M., Sobczak, Megan Orazio

Thank you, Aaron. In order to consider and evaluate this information, rather than just the sum total figures you have presented, we need to review the details of the calculations for each amount you have listed on the attachments to this email.

With regard to backpay claims at each Hospital, please identify the persons to whom you claim backpay is owed, the basis for your calculations, the periods of time for which you claim backpay is owed, the amount of interim earnings, and evidence of mitigation efforts you have obtained.

With regard to allegedly discontinued wage increases, please provide the specific basis for your calculations.

With regard to monies you claim are owed in connection with PTO, MTO, and charge nurse allegations at Bluefield and Greenbrier, please provide the specific details and basis for your calculations, periods of time for which you claim such monies are owed, and individuals to whom you allege the monies should be paid.

Finally, with regard to negotiating expenses, please forward your specific calculations as you develop them.

If you have any questions or would like to discuss this matter further, please don't hesitate to contact me. We would appreciate receiving this information as soon as possible.

Best regards,

Carmen M. DiRienzo  
917-217-4691

On Jul 2, 2018, at 10:13 AM, Sukert, Aaron <[Aaron.Sukert@nlrb.gov](mailto:Aaron.Sukert@nlrb.gov)> wrote:

Dear Counsel:

Please see the revised attachments which reflects adjustments to the CHS II – Greenbrier backpay amounts, and accordingly the revised totals. Below are the revised totals:

Attached are the approximate current backpay calculations for CHS I, CHS II and the compliance specification for Fallbrook based upon the information currently in General Counsel's possession. General Counsel reserves the right to and will modify these figures based upon the receipt of any supplemental information, as necessary. Unless otherwise indicated, adjustments were made for interim earnings where appropriate. Interest has been computed through 6/22/18. As you know, interest continues to accrue thereafter. The backpay calculations take into account all of General Counsel's amendments to the

complaints in CHS I and CHS II until the present. The figures are complete, unless as noted below. If you have follow up questions, please let us know, and we can include the particular Counsel for General Counsel involved in those allegations as part of those discussions.

Here are the approximate backpay calculations:

**CHS I: \$1,041,005.40**

**CHS II: \$3,153,999.09**

**TOTAL (CHS I + CHS II): \$4,195,004.49**

**Fallbrook Compliance: \$23,938.68**

**TOTAL (CHS I + CHS II + FALLBROOK COMPLIANCE CASE):  
\$4,218,943.17**

**For CHS I:**

Bluefield – the figure includes interest and excess tax liability, but backpay, interest and excess tax are not broken down in the spreadsheet.

Fallbrook – for both the CNA and SEIU allegations, to determine the Transmarine remedy, a two-week period was used, based on the parties reaching an overall settlement.

**For CHS II:**

Bluefield – the figure includes interest and excess tax liability, but backpay, interest and excess tax liability are not broken down in the attached spreadsheet. General Counsel withdrew Paragraph 44(C) (the PTO unilateral change allegation), and it is listed as having 0 backpay.

Greenbrier – General Counsel withdrew Paragraph 38(C) (unilateral change to method of obtaining work and work hours in Cath lab) and it is listed as having 0 backpay.

As indicated, for CHS II, negotiation expenses for Bluefield and Greenbrier still need to be calculated.

Please contact us with any further questions. Please also cc any Counsel for General Counsel from any particular Regions for the respective Hospitals involved.

Sincerely,

Aaron Sukert and Stephen Pincus,  
Counsel for General Counsel

Aaron B. Sukert  
Counsel for General Counsel  
National Labor Relations Board, Region 8  
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Facsimile: (216) 522-2418

\*\*\*\*\* (see  
6/28/18 Email Below With the Prior Totals)  
PRIOR TOTALS FROM 6-28-18

**From:** Sukert, Aaron  
**Sent:** Thursday, June 28, 2018 2:30 PM  
**To:** 'Carmen DiRienzo' <[cdirienzo@carmodyandcarmody.com](mailto:cdirienzo@carmodyandcarmody.com)>; 'Bryan Carmody' <[bcarmody@carmodyandcarmody.com](mailto:bcarmody@carmodyandcarmody.com)>; 'Andrew Lammers' <[alammers@carmodyandcarmody.com](mailto:alammers@carmodyandcarmody.com)>; 'Don Carmody' <[dcarmody@carmodyandcarmody.com](mailto:dcarmody@carmodyandcarmody.com)>; 'Hudson, Robert D.' <[rhudson@fbtlaw.com](mailto:rhudson@fbtlaw.com)>; 'chsi-nlrh-hh@howardandhoward.com' <[chsi-nlrh-hh@howardandhoward.com](mailto:chsi-nlrh-hh@howardandhoward.com)>; 'lsachs@howardandhoward.com' <[lsachs@howardandhoward.com](mailto:lsachs@howardandhoward.com)>; 'pmccarthy@howardandhoward.com' <[pmccarthy@howardandhoward.com](mailto:pmccarthy@howardandhoward.com)>; 'wouthier@rwjplc.com' <[wouthier@rwjplc.com](mailto:wouthier@rwjplc.com)>; 'jjacobson@rwjplc.com' <[jjacobson@rwjplc.com](mailto:jjacobson@rwjplc.com)>; Mearns, Timothy <[Timothy.Mearns@nlrb.gov](mailto:Timothy.Mearns@nlrb.gov)>; White, Joel <[Joel.White@nlrb.gov](mailto:Joel.White@nlrb.gov)>; Banks, Ashley L. <[Ashley.Banks@nlrb.gov](mailto:Ashley.Banks@nlrb.gov)>; Schafhauser, Sarah B. <[Sarah.Schafhauser@nlrb.gov](mailto:Sarah.Schafhauser@nlrb.gov)>; Mervin, Joelle <[Joelle.Mervin@nlrb.gov](mailto:Joelle.Mervin@nlrb.gov)>; Laufer, Amanda W. <[Amanda.Laufer@nlrb.gov](mailto:Amanda.Laufer@nlrb.gov)>; Garber, Noah <[Noah.Garber@nlrb.gov](mailto:Noah.Garber@nlrb.gov)>; MacKay, Robert <[Robert.MacKay@nlrb.gov](mailto:Robert.MacKay@nlrb.gov)>; 'Katherine R. Cloud, Esq. R' <[kcloud@rwjplc.com](mailto:kcloud@rwjplc.com)>  
**Cc:** Choudhury, Rudra <[Rudra.Choudhury@nlrb.gov](mailto:Rudra.Choudhury@nlrb.gov)>; Pincus, Stephen M. <[Stephen.Pincus@nlrb.gov](mailto:Stephen.Pincus@nlrb.gov)>  
**Subject:** CHS I and CHS II Backpay Calculations (interest calculated through 6-22-18)  
**Importance:** High

Dear Counsel:

Attached are the approximate current backpay calculations for CHS I, CHS II and the compliance specification for Fallbrook based upon the information currently in General Counsel's possession. General Counsel reserves the right to and will modify these figures

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**Fallbrook Compliance: \$23,938.68**

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\$4,196,955.18**

**For CHS I:**

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Please contact us with any further questions. Please also cc any Counsel for General Counsel from any particular Regions for the respective Hospitals involved.

Sincerely,

Aaron Sukert and Stephen Pincus,  
Counsel for General Counsel

Stephen M. Pincus



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<Backpay Spreadsheet.6-28-18.interest thru 6-22-18.revised version.sent.7-2-18..pdf>

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<Backpay Spreadsheet.6-28-18.interest thru 6-22-18.revised version.sent.7-2-18..xlsx>

## **EXHIBIT E**

**Subject:** DHSC, LLC d/b/a Affinity Medical Center et al. / Case Nos. 08-CA-117890 et al.

**Date:** Friday, June 8, 2018 at 12:14:24 PM Eastern Daylight Time

**From:** Bryan Carmody

**To:** Sukert, Aaron, Pincus, Stephen M.

**CC:** Mearns, Timothy, Banks, Ashley L., Mervin, Joelle, Laufer, Amanda W., Noah.Garber@nrlb.gov, Don Carmody, Carmen DiRienzo, Andrew Lammers

Aaron,

As you know, on Wednesday, Peter Robb issued General Counsel Memorandum 18-04, whereby Mr. Robb provided guidance on how challenges to work rules should be evaluated under The Boeing Co., 365 NLRB No. 154 (Dec. 14, 2017). Please accept my e-mail here as my clients' request that the Regions immediately evaluate whether, under GC Memorandum 18-04, a good faith basis still exists for the Regional Directors to continue any further prosecution of the policy allegations that were not resolved by the Consent Orders recently entered by Judge Laws.

Thank you,

Bryan